IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

WEDNESDAY, THE 6TH JUNE 2007 / 16TH JYAISHTA 1929

OP.No. 3054 of 2001(L)

PETITIONER:

J.D.T ISLAM ORPHANAGE COMMITTEE,
KOZHIKODE, A SOCIETY REGISTERED UNDER THE
SOCIETIES REGISTRATION ACT, REP. BY ITS SECRETARY.

BY ADV. SRI.M.RAMESH CHANDER
SRI.P.RAGHUNATH

RESPONDENTS:
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1. **THE ASSISTANT ENGINEER,**
ELECTRICAL MAJOR SECTION,
KS.E.B, KARAPARAMBA, CALICUT.

2. **THE DEPUTY CHIEF ENGINEER,**
ELECTRICAL CIRCLE OFFICE, CALICUT.

3. **ELECTRICAL INSPECTOR, CALICUT.**

4. **THE CHAIRMAN, KERALA STATE ELECTRICITY BOARD, '**
VYDYUTHI BHAVAN, TRIVANDRUM.

ADV.SRI.C.K.KARUNAKARAN, SC FOR KSEB

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 06/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NO. 5054/2001 IN OP NO. 3054/2001 L.

DISMISSED

06/06/2007. SD/- KURIAN JOSEPH, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE LETTER DT. 28/5/93 SENT TO THE PETITIONER BY R1.

EXT.P2. COPY OF THE LETTER DT. 26/6/93 SENT TO PETITIONER BY R3.

EXT.P3. COPY OF THE LETTER DT. 25/2/94 SENT TO R1 BY PETITIONER

EXT.P4. COPY OF THE LETTER DT. 6/2/95 TO PETITIONER BY R1.

EXT.P5(1). COPY OF THE BILL FOR 6/93 SENT BY R1 TO PETITIONER

EXT.P5(2). COPY OF THE BILL FOR 8/93 BY R1 TO PETITIONER

EXT.P5(3). COPY OF THE BILL FOR 9/93 SENT BY R1 TO PETITIONER

EXT.P5(4). COPY OF THE BILL FOR 10/93 BY R1 TO PETITIONER

EXT.P5(5). COPY OF THE BILL FOR 11/93 BY R1 TO PETITIONER

EXT.P5(6). COPY OF THE BILL FOR 12/93 BY R1 TO PETITIONER

EXT.P6. COPY OF THE REPORT DT. 13/2/95 SENT TO R3 BY SABOO ENGINEERING.

EXT.P7. COPY OF THE LETTER DT. 7/10/96 BY R1 TO THE PETITIONER.

EXT.P8. COPY OF THE BILL DTD. 5/10/96 TO PETITIONER BY R1.

EXT.P9. COPY OF THE BILL DT. 5/10/96 TO PETITIONER BY R1.

EXT.P10. JUDGMENT DT. 16/6/97 IN OP NO. 17290/96.

True copy

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KURIAN JOSEPH, J.

O.P.No.3054 of 2001

Dated this the 6th day of June, 2007

JUDGMENT

What is the penalty to be imposed in the case of an unauthorised extension of a service connection, under the Conditions of Supply of Electrical Energy, the Regulations framed under Section 79(j) of the Electricity (Supply) Act, 1948, is the issue arising for consideration in this case. The Electricity Board has taken the view that the unauthorised extension is to be penalised at three times the energy charges prescribed under LT VIII Tariff, for the period the unauthorised extension was connected to the system. At the outset it is to be noted that even under Regulation 42(d) of the Conditions of Supply read with Section 26 of the Indian Electricity Act, 1910 the penalty is to be limited only to six months.

2. Regulation 24 of the Conditions of Supply of Electrical Energy provides that "supply taken from the existing plug point/mains to any appliance situated outside the premises will be treated as an extension. Such extensions should be taken

only for temporary purposes." The procedure for taking such temporary extension is prescribed under the same Regulation. To the extent relevant it reads as follows:-

> "Should the consumer, at any time after the supply of energy has been commenced, desire to increase the number or wattage or capacity of lights, fans or motors etc., on his premises on a temporary or permanent basis or in any way alter the position of his wiring therein, notice thereof must be sent by the consumer in writing to the Board whose representative will call and inspect the alteration and, if necessary change meters and fuses and alter the service line. For this purpose if a single phase service line is to be converted to three phase or change of size of conductor to meet increased maximum demand is necessitated, the work shall be done at the cost of consumer on deposit work basis. A test report signed by a licensed wiring contractor should also be produced by the consumer along with his application for extension and alteration. The consumer should remit the testing fee. Failure to give such notice any derange the supply system and will render the supply liable to be summarily discontinued. During such time as alterations, additions, or repairs are being executed, the supply to the circuit, which is being altered, added to or repaired, must be entirely disconnected and it shall remain disconnected until the alterations, additions or repairs have been tested and passed by the Board. In the event of any unauthorised extensions, alterations or repairs resulting in any damage to the system of the Board, the consumer will have to pay the Board all expenses on account of such damages also."

Regulation 42 provides for situations dealing with misuse of energy. Though misuse of energy as such is not defined under the Regulations, on broader principles, unauthorised extension is certainly a misuse of energy since unauthorised additional load is

defined as misuse of energy. Under Regulation 42(d) "misuse of energy will be billed at three times the rate applicable to the respective tariff for the previous six months from the date of detection of misuse unless there are convincing reasons for adopting different periods and supply disconnected without notice." The Board was adopting the method of levying proportionate energy charges also for the unauthorised additional load, in addition to the fixed charges. However, this court has now settled the law by judgment in Writ Appeal No.1231/2003 that the penalty has to be limited to the fixed charge portion only since the quantity of energy consumed at the premises is otherwise measured through the meter and charges have already been paid for the same. Section 26 of the Indian Electricity Act 1910 read with Regulation 35 provides that the amount of energy supplied to a consumer is to be ascertained by means of meter or meters installed at the premises. Irrespective of the connected load or extension, the energy supplied at a premises is measured by the meter and charges thereof are paid also. Under Regulation 44 the Board is entitled to disconnect the supply even

without notice if the installations of the consumer are in such condition that they are likely to cause danger to life or loss of property. In view of the procedure prescribed for extension under Regulation 24 as noted above, in case any unauthorised extension is taken, and if the same is likely to cause any danger to life or loss of property, the said extension as well as the supply itself is liable to be disconnected.

3. Apart from the disconnection of such unauthorised extension, to what extent the consumer can be visited with penalty for the said extension is the question. LT VIII Tariff is for temporary extension. It is "applicable to temporary extension taken from consumers premises". There the tariff is only fixed charges per KW of connected load per day, in addition to the application fee, testing fee etc. The application fee and testing fee are the fees for the procedures prescribed for availing the temporary extension under Regulation 24 quoted above. It may be noted that under such temporary extension there is no measurement of the quantity of energy by a separate meter since evidently the same is measured in the meter installed at the main

premises. The charges are limited to the extent of load covered by the temporary extension and limited to the period of such temporary extension. That tariff for authorised extension cannot be made applicable to the unauthorised extension. The respective tariff for the purpose of penalty prescribed under Regulation 42(d) cannot be the tariff under LT VIII. That expression 'respective tariff' under Regulation 42(d) denotes only the tariff at which the quantity of supply at the main premises is billed. It is also to be noted that LT VIII tariff is only on daily basis whereas the penalty under Regulation 42(d) is for six months, indicating clearly that the respective tariff for penalty is only the tariff for the supply at the main premises. In the case of the petitioner in the instant case, which is an Orphanage, the tariff is LT VI, currently under LT VI-D. At present for consumers under LT VI D there is no fixed charge at all; only the energy charge is levied. There is no dispute that LT VIII Tariff was intended for temporary extensions. But there is no provision under the Conditions of Supply of Electrical Energy or the Tariff Notification that the unauthorised extension shall be treated as

temporary extension for the purpose of Tariff. The Conditions of Supply of Electrical Energy provided for disconnection of the temporary extension and if required, for the disconnection of the supply itself from where the extension is unauthorisedly taken. In the absence of any provision enabling the Board to levy energy charges under LT VIII Tariff for the alleged unauthorised extension, billing at penal rates on the basis of the connected load on daily basis is impermissible. The LT VIII Tariff is for temporary purposes. That is in a situation where on application the permission is duly granted and the extension is taken as authorised by the Board.

4. There is no case for the Board that the energy consumed in the premises where the extension is taken is not measured. That energy consumed at the premises where the alleged unauthorised extension is taken from the main premises is measured in the meter at the main premises. Under Section 26 of the Indian Electricity Act, 1910, energy shall be billed only on proper measurement by a correct meter. There is no dispute that the meter is faulty. Therefore, the energy consumed through the

meter having been billed and the payment having been made, there can be no imposition of penal rates at LT VIII Tariff on daily basis for the alleged unauthorised extension, the same being not permitted under the Conditions of Supply of Electrical Energy. Therefore, Ext.P12 in the matter of penal billing for the temporary extension under LT VIII Tariff is quashed. Liability is only for the penal rates at three times the fixed charges alone under LT VI tariff for six months, during the relevant period.

The writ petition is disposed of as above.

(KURIAN JOSEPH, JUDGE)

ahg.

"C.R."

KURIAN JOSEPH, J.

O.P.NO.3054/2001

JUDGMENT

6th June, 2007